

## **MINUTES**

### **MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on March 25, 1999  
at 8:21 A.M., in Room 325 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)  
Sen. Al Bishop, Vice Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Duane Grimes (R)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Reiny Jabs (R)  
Sen. Walter McNutt (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Jodi Pauley, Committee Secretary  
Valencia Lane, Legislative Branch

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 54, 3/19/1999; HB 59,  
3/19/1999; HB 482, 3/19/1999;  
HB 185, 3/19/1999  
Executive Action: HB 339; HB 459; HB 566

#### **EXECUTIVE ACTION ON HB 459**

**Discussion:**

**Valencia Lane** explained the amendments for **HB 459**.  
**EXHIBIT(jus67a01)**

**Motion/Vote:** SEN. HOLDEN moved AMENDMENTS HB045901.av1. Motion carried 6-0.

**Motion/Vote:** SEN. DOHERTY moved HB 459 BE CONCURRED IN AS AMENDED. Motion carried 6-0.

*{Tape : 1; Side : A; Approx. Time Counter : 8:30 a.m.}*

**EXECUTIVE ACTION ON HB 269**

**Discussion:**

**Chuck Hunter, Department of Public Health and Human Services,** said they originally opposed the bill in the House. He said in the original draft there was a lack of clarity and there was the potential for advocates to interfere with the conduct of their investigations. He said they developed a number of amendments which limited the advocates ability to get between social workers and the work that they needed to do. These amendments were adopted by the House. He said there is a lack of trust in social workers and in this division and the work that they do. Many view social workers as child snatchers who are controlling and have too much power. The advocacy bill brings some method of dealing with that by allowing someone neutral to observe this process as they go along in the investigation stage. He said there are some situations where they have custodial issues. He said if a mom and a dad are fighting over custody at the same time the children are being neglected or abused, they have to deal with that. He said he does believe that if multiple advocates were appointed, the judge would be in the position of hearing a number of perspectives and would sort through all of those things and make the best decision on behalf of the child. He said in the final analysis if they take this bill at its face value, to allow families to have someone come in and help them, then it is a good bill. But if they have mean spirited advocates then there could be problems with this bill.

**CHAIRMAN GROSFIELD** asked if the bill provides for training or certification of these advocates. **Chuck Hunter** said there is nothing in the bill that guarantees any kind of knowledge or special background in helping with these situations. He said their proposal was to have the court appoint counsel for these families. However, this idea was rejected as too expensive, etc. But they would like to see competent people providing these services. He said one avenue is, they do have the citizen review boards, and they do provide basic training for these people and advocates could be tied into this training.

**SEN. MIKE HALLIGAN** said in a large percentage of cases the children are never taken away. Many parents go to a parenting class and they get help and they are not involved in the system. He asked how often are children taken away. **Chuck Hunter** said of the 10,000 or so calls that they get on an annual basis about 60 percent of those are investigated briefly and it is determined there are no real issues. He said of the 4000 cases that remain, 60 percent of those children stay in the home. He said some leave the home for a short time and then come back.

**SEN. HALLIGAN** asked of those children taken out of the home go to foster care or are they taken to extended family, etc. **Chuck Hunter** said he would get this information.

**SEN. JABS** asked if a 15 year old girl can get representation if she needs it. **Chuck Hunter** said anyone who wants to bring someone in with them is allowed to do so. He said every child that is involved in the system if they get into court proceedings, will have a guardian appointed by the courts.

**SEN. HALLIGAN** asked if they have a formal policy right now that is in written form that allows people to bring in their advocate or friend. **Chuck Hunter** said he doesn't think it is in written form.

#### EXECUTIVE ACTION ON HB 566

##### Discussion:

**Valencia Lane** explained the amendments for **HB 566**.

**EXHIBIT** (jus67a02)

Motion: **SEN. DOHERTY** moved **AMENDMENTS HB056601.av1**.

##### Discussion:

**SEN. HOLDEN** said he would like to segregate amendment #3 from the rest of them. He said in the military they don't just have handgun classes. They deal with all firearms and gun safety is the same for all guns. He said they should leave the bill as it is and not reinsert the handgun language.

**CHAIRMAN GROSFIELD** said the training he got just dealt with rifles and each gun has a different training. He said a normal soldier doesn't pack a sidearm they pack a rifle. He said his youngest son wants a handgun to shoot all of the wolves that are going to be coming out of Yellowstone Park when he is working on the ranch. He has been through hunter safety and does fine with a rifle, but there is a difference and this is a concern.

**SEN. HOLDEN** said safety issues are the same, and to deny someone a permit just because they didn't take a handgun safety course is too technical.

**SEN. BARTLETT** said what they are dealing with is a permit to carry a concealed weapon and that usually means some type of handgun or sidearm. She said perhaps they should include firearms and handguns.

**Substitute Motion/Vote:** **SEN. BARTLETT** made a substitute motion TO INSERT "FIREARMS, INCLUDING HANDGUNS.". Substitute motion carried 7-0.

**Discussion:**

**SEN. BARTLETT** discussed amendment #4. She said in order to do the background check they need a social security number and it should be restored.

**SEN. HALLIGAN** said he does confidential searches for the court to find people's birth parents and when they do something nationwide with just a birth date there will be anywhere from 30 to 100 people with the same name and birth date. The social security number is a way to ensure who these people are and they can get that gun right away.

**SEN. HOLDEN** said these are based off of the driver's license numbers and not social security numbers.

**Vote:** Motion to accept the rest of the amendments carried 5-3 on a roll call vote.

**Motion/Vote:** **SEN. BARTLETT** moved HB 566 BE CONCURRED IN AS AMENDED. Motion carried 8-0.

*{Tape : 1; Side : A; Approx. Time Counter : 8:55 a.m.}*

**EXECUTIVE ACTION ON HB 339**

**Discussion:**

**SEN. BARTLETT** said she would like to segregate amendment #2 on HB033901.av1. **EXHIBIT(jus67a03)**

**Motion:** **SEN. BARTLETT** moved ALL AMENDMENTS FOR HB 339 EXCEPT #2. (EXHIBIT 3)

**Discussion:**

**SEN. BARTLETT** explained the amendments.

**Vote:** Motion carried 7-0.

**Motion:** **SEN. BARTLETT** moved **AMENDMENT #2 ON HBO33901.av1.**  
**(EXHIBIT 3)**

**Discussion:**

**SEN. BARTLETT** explained the amendment.

**SEN. JABS** said this study will save money and should be one of the few that is mandated.

**SEN. HALLIGAN** said leadership doesn't like mandatory studies on bills. He said he doesn't have any concern that this won't get funded.

**CHAIRMAN GROSFIELD** said this is a very important issue and should be done.

**SEN. BARTLETT** said if they are going to make a difference in how their interim work flows they have to start now and set a precedence that does not mandate studies.

**Vote:** Motion carried 5-2 with Grosfield and Jabs voting no.

**Motion/Vote:** **SEN. BARTLETT** moved **HB 339 BE CONCURRED IN AS AMENDED.** Motion carried 7-0.

*{Tape : 1; Side : A; Approx. Time Counter : 9:06 a.m.}*

**HEARING ON HB 54**

**Sponsor:** **REP. WILLIAM "RED" MENAHAN, HD 57, Anaconda**

**Proponents:**

Diana Leibinger-Koch, Department of Corrections  
Jim Larson, Teamsters Union  
Michael Hue Khang, Flathead Co. Detention Center  
Eugene Fenderson, MT Joint Heavy and Highway Committee  
Terry Minow, MT Federation of Teachers  
Ray Barnicoat, MT Assoc. of Counties Risk Manager  
Jim Smith, MT Sheriffs and Peace Officers Assoc.  
Mike Mahoney, Warden at MT State Prison

**Anita Shaw Tymrak, Gallatin Co. Detention Center**  
**Bill Slaughter, Sheriff in Gallatin Co.**  
**Dennis McCave, Yellowstone Co. Detention Facility**

**Opponents:**

**Scott Crichton, ACLU**

**Opening Statement by Sponsor:**

**REP. WILLIAM "RED" MENAHAN, HD 57, Anaconda,** said this bill has had a series of amendments to make it less punitive. He said inmates have been throwing bodily fluids on other inmates and guards and there are health risks involved.

**Proponents' Testimony:**

**Diana Leibinger-Koch, Department of Corrections,** said inmates are finding that they have a little power while they are in jail by throwing bodily fluids on jailers, officers and prisoners. The assault is sometimes with urine, feces, spit mixed with blood, etc. She said right now under the current assault statutes, county attorneys don't feel that they can prosecute an offender for assaulting an officer with bodily fluids. The prosecutor has to prove intent that they intended to cause bodily injury. Many prosecutors don't feel they can carry that burden in a bodily fluid case as the offender probably doesn't intend to cause serious injury. This bill makes it a strict liability offense. A prosecutor would not have to prove any intent element, they only have to prove that they were assaulted with a bodily fluid to gain a conviction. The amendments that were put on in the House make it a misdemeanor offense if a person in a jail assaults a jail officer with a bodily fluid. If a person does it while in prison it is felony offense. The bill allows the court to impose a jail sentence on an inmate. The bill also contains a provision for the offender to spend 90 days in administrative segregation if the assault happened while the person was in prison. She handed out some amendments and explained them. **EXHIBIT (jus67a04)** Sheriffs and prison officials agree that this bill is absolutely necessary.

**Jim Larson, Teamsters Union,** said the threat of disease transmitted by urine, spit, feces or blood borne pathogens to detention staff from regular contact by an inmate is a major concern in prison and detention centers nationwide. The use of these weapons is becoming more common. He said this past week at the Yellowstone Detention Center an inmate intentionally cut his head open and threw as much blood as possible at officers.

**Michael Hue Khang, Flathead Co. Detention Center**, said in June of last year an inmate spit in his face. This inmate is hepatitis C positive, a heavy drug user, and has lots of dental problems therefore having blood in his spit. It was a humiliating experience and is a power play that inmates use to try and degrade officers, etc. He had to go through seven months of medical testing to make sure that he was not contaminated with any form of Hepatitis or HIV. He said it affected his life dramatically for seven months. He said the only thing they could charge the inmate with, under the statute, was a simple misdemeanor assault. He said if this individual is convicted he will probably only get six months suspended and will never serve a day in jail for it. He said there needs to be definite consequences for this type of action, because it directly affects public safety issues.

*{Tape : 1; Side : B; Approx. Time Counter : 9:19 a.m.}*

**Eugene Fenderson, MT Joint Heavy and Highway Committee**, said this bill will bring some esteem and pride to some of the lowest paid workers in the State of Montana.

**Terry Minow, MT Federation of Teachers**, said these incidents are all too real and they have a devastating affect on moral. They also have the potential of creating a health risk. The passage of this bill will send a positive message to correctional officers and law enforcement. It will also give the criminal justice system the tools to hold prisoners accountable for their actions.

**Ray Barnicoat, MT Assoc. of Counties Risk Manager**, said this bill is a good risk reduction potential in considering Workers Compensation claims as victims could come forward that have been assaulted by inmates.

**Jim Smith, MT Sheriffs and Peace Officers Assoc.**, said the throwing of bodily fluids is becoming quite common and it is a matter of concern for people in this line of work. He said there needs to be stiff penalties for these types of actions.

**Mike Mahoney, Warden at MT State Prison**, rose in support of HB 54. **EXHIBIT(jus67a05)**, **EXHIBIT(jus67a06)**

*{Tape : 1; Side : B; Approx. Time Counter : 9:26 a.m.}*

**Anita Shaw Tymrak, Gallatin Co. Detention Center**, said she had a suicidal inmate and while trying to physically restrain this inmate she was exposed to bodily fluids. She said she was humiliated and had a lot of fear until he was tested for HIV. She said she teaches at the Montana Law Enforcement academy in crisis

prevention and the four words she stresses is care, welfare, safety and security. It is time they make this a felony offense to be concerned with the care, welfare, safety and security of detention officers and law enforcement.

**Bill Slaughter, Sheriff in Gallatin Co.**, said he loses detention officers at a rate of 100 percent each year. He said most of these don't leave because of money, but because of working conditions. This bill will help staff to understand that there is someone behind them with support. These incidents happen daily and is used as a terrorism tactic. It costs a lot of money to hire and to retrain other law enforcement and detention officers.

**Dennis McCave, Yellowstone Co. Detention Facility**, said for inmates to intentionally spread a disease to an officer and for it to only be a misdemeanor is not right.

**Opponents' Testimony:**

**Scott Crichton, ACLU**, turned in testimony in opposition of **HB 54**.  
**EXHIBIT (jus67a07)**

*{Tape : 1; Side : B; Approx. Time Counter : 9:40 a.m.}*

**Questions from Committee Members and Responses:**

**SEN. BARTLETT** asked when these instances occur now what is the disciplinary action taken against the offender. **Mike Mahoney** said there is an internal disciplinary process and the inmate would be subject to a write up. The inmate would have a hearing in front of a hearings officer and depending on the circumstances of the inmate's behavior he may be placed in temporary lockup. He would not be reclassified to administrative segregation until he has had a due process hearing and a classification hearing.

**SEN. BARTLETT** asked what is administrative segregation? **Mike Mahoney** said it is a classification designation within the institution. If an individual has been determined to be disruptive and has a history of behavior that is not acceptable to be placed in the general population he is subject to a review of his classification level to be placed in administrative segregation. In the Montana State Prison that is in the maximum security unit. They are usually there for a minimum of three months and up to 24 months.

**SEN. BARTLETT** said usually the prison has opposed legislation on how prisons operate internally. This bill is telling the prison how to classify inmates and how long they have to be held and why



are they not opposing this. **Mike Mahoney** said this is a concern, but they are willing to compromise to help their staff.

**SEN. BARTLETT** said this bill does not change the crime or punishment of these crimes in a detention center. She asked if they are only gaining a charge that a county attorney is more likely to prosecute under because it is easier to prove. **Diana Leibinger-Koch** said her conversations with County Attorneys is they would not bring a misdemeanor charge because they could not prove it.

**SEN. BARTLETT** asked if this is a charge that County Attorneys are more likely to be willing to file because they can prove it. **Diana Leibinger-Koch** said yes. The penalty that is in the statute right now is a compromise penalty.

**SEN. HOLDEN** said what they are talking about here is convicted criminals throwing feces at people and the ACLU comes in and says that the liberties of the people working there don't matter and why is this. **Scott Crichton** said the prosecution has tried to commit these people with attempted deliberate homicide for a bodily fluid splash because they didn't know what else to charge them with. HIV has been dealt with carefully because it is such an infectious disease. A worker who gets a bad bill of health from exposure in the line of work has no guarantees that they are going to be treated with an aggressive treatment therapy. There is no contagious diseases even being discussed in this bill, but that is what is driving this issue. He said they have to make sure that anybody who get exposed in a prison system, guard or inmate alike will get all of the medical, psychiatric, and counseling that is required.

**SEN. HOLDEN** said the people that work there have civil liberties as well and would this bill provide no deterrent towards their protection in the future. **Scott Crichton** said there may be a deterrent factor. He said if there is a wide scale problem across the board in county jails and in prisons, then having a zero fiscal impact is unrealistic. There will be longer sentences for a lot of offenders and added costs.

**SEN. HALLIGAN** asked if the people from the Department of Public Health would give their opinion. **Michael Spence, Department of Public Health and Human Services**, said he has worked extensively on education for prison systems on HIV disease and other communicable diseases. He said there has been a lot of misinformation over the years that has transpired with regard to the actual infections of various agents. The disease that is most communicated by bodily fluids and blood is Hepatitis B. Hepatitis B, however, can be prevented. He said with regard to HIV, the fluid

that contain this virus is predominately blood. It is extremely uncommon to find it in vomit, saliva, feces or urine. He said if they know of someone who is HIV positive they try to lower the virus load within their blood. The blood is far less contaminating with this therapy than they are if they have not had the therapy. He said he has done several surgeries on HIV positive people and once he was poked by a needle from one of these surgeries. He said it was a surgical needle that he got poked with and he had to be tested for a year. The likelihood of getting the HIV virus is about 1 in 250,000 when poked with a surgical needle. The risk of HIV being transmitted to a person being contaminated with bodily fluids is very low. People can be immunized against Hepatis A and B. They need educational programs so that employees understand what procedure they must go through if and when such and exposure does occur.

***{Tape : 2; Side : A; Approx. Time Counter : 10:00 a.m.}***

**SEN. HALLIGAN** asked what communicable diseases are most likely to be transmitted by saliva or vomit. **Michael Spence** said probably the common cold.

**SEN. HALLIGAN** asked in a county jail is there any programs to allow for any of these expensive treatments and are they even tested. **Michael Spence** said he is not sure what all of the rules are for therapy of HIV positive inmates in prisons and jails. But prisons do provide the current up-to-date standards of care of HIV infected inmates that do wish to take that. He said HIV disease is a chronic illness and is no longer a death sentence.

**SEN. HALLIGAN** asked if the drug therapy is AZT and what is the cost. **Michael Spence** said the current drug therapy is now a combination of multiple drugs and it is quite costly. AZT is only one drug in a combination of many.

**SEN. HALLIGAN** asked if they test at the Montana State Prison. **Mike Mahoney** said they don't do mask screening for HIV, but they do identify those that have given their medical history that they may be in a high risk group and they are counseled and encouraged to submit to a test for HIV.

**SEN. HALLIGAN** asked if their medical budget allows for the type of drug therapy that has been mentioned. **Mike Mahoney** said yes it does.

**SEN. HALLIGAN** asked if counties have any drug therapy programs. **Bill Slaughter** said they don't test and most of the time they don't even have their medical records. He said if they are in transit and they do know they are HIV positive, etc. they are not

allowed to tell their staff because of constitutional rights. He said they don't have a budget for therapies and it is very difficult on the counties if they have to provide treatment.

**CHAIRMAN GROSFIELD** asked if this is a disease bill. **REP. MENAHAN** said the bill is not about AIDS, etc. it is a moral issue within the prisons and jails for the staff that is degraded by these inmates and have no recourse. He said if the staff is not immunized it causes them a lot of worry, etc.

**Closing by Sponsor:**

**REP. MENAHAN** closed on **HB 54**.

*{Tape : 2; Side : A; Approx. Time Counter : 10:10 a.m.}*

**HEARING ON HB 185**

**Sponsor:** **REP. WILLIAM "RED" MENAHAN, HD 57, Anaconda**

**Proponents:**

**Gene Kiser, Montana Board of Crime Control**  
**Dennis McCave, Yellowstone Co. Detention Center**  
**Ray Barnicoat, MT Assoc. of Counties Risk Manager**  
**Jim Smith, Montana Sheriffs and Peace Officers Assoc.**  
**Kathleen Martin, Department of Public Health and Human Services**

**Opponents:** None

**Opening Statement by Sponsor:**

**REP. WILLIAM "RED" MENAHAN, HD 57, Anaconda,** said this bill will train people to inspect jails and create procedure manuals for law enforcement so that they will know what the policy is and help them if they get sued, etc. He said they are still trying to get some funding that could go into **HB 2**.

**Proponents' Testimony:**

**Gene Kiser, Montana Board of Crime Control,** said the board has been involved with the Sheriffs and Peace Officers Assoc. since the early 1970s in working with and developing jail standards. The board has unanimously said they will administrate this bill, but without funding, this can pose a problem as they have no way to administrate this.

**Dennis McCave, Yellowstone Co. Detention Center,** said the establishment of jail standards is essential to get consistency throughout the state.

**Ray Barnicoat, MT Assoc. of Counties Risk Manager,** said the county would have the ability to raise money if necessary to address deficiencies and capital costs required as a result of a jail inspection. This would require a vote of the people to have a tax increase. The funding should also be in place to make sure the goals of this effort are met. He said back in 1997 there was a suit filed in Lake County as a result of the death of an inmate. The cost of that case exceeded close to \$1.5 Million and this was incurred by the county and the citizens of Lake County. He said they have had jail standards in Montana for a long time, but they have always been voluntary. However, they have not paid much attention to these issues. Nonetheless, they do need to take a more aggressive approach to the implementation of mandatory standards.

**Jim Smith, Montana Sheriffs and Peace Officers Assoc.,** said this is an issue of liability at the county level. He said the \$200,000 appropriation was taken out in the House and it needs to be restored. He said the purpose of this money was to train a group of people who could undertake jail inspections. He said it would also provide the Board of Crime Control a little bit of administrative cost for their time and work. He said there could be some annual costs after that.

*{Tape : 2; Side : B; Approx. Time Counter : 10:22 a.m.}*

**Kathleen Martin, Department of Public Health and Human Services,** said this could be very difficult on local health departments.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. JABS** said this is to stop liability, but if they request a county to bring their jail up to code it could be very difficult for the county to afford that and what happens if they don't do it, will it create more liability? **Ray Barnicoat** said this could happen, but through training, hopefully they will be able to convince sheriffs and jail administrators that this is a very necessary process.

**CHAIRMAN GROSFIELD** asked if they had anyone in Finance and Claims trying to find money for this bill. **REP. MENAHAN** said they might not get it all, but hopefully they can get enough to do some training.

**Closing by Sponsor:**

**REP. MENAHAN** said the idea is not to go out and take over a facility. He said they will have the sessions of 2001 and 2003 to review this. He said they had a student that committed suicide in the Anaconda/Deer Lodge County Jail during the night and no one checked on any activities during the night and the county might be liable for that. He said most jails don't even have a procedure manual for putting people in jail, etc.

**SEN. BISHOP** took over the chair.

**HEARING ON HB 59**

**Sponsor:** **REP. DOUG MOOD, HD 58, Seeley Lake**

**Proponents:**

**Diana Leibinger-Koch, Department of Corrections**  
**Sandy Heaton, Clinical Director of the Sex Offender Program at MT State Prison**

**Opponents:** None

**Opening Statement by Sponsor:**

**REP. DOUG MOOD, HD 58, Seeley Lake,** said under the current law an individual who commits a sexual offense and then commits a further crime can plea bargain out of the sexual offense in the process of pleading guilty for murder, etc. When that individual gets out in society there is no notification to the members of society that his motivation for his crime was a sexual offense. He said under this bill the judge can now order an offender to register as a sex offender, but only if the offender agrees to that in the plea bargain arrangement. He read the criteria set forth in the bill concerning plea bargaining arrangements. He said the defendant must plead guilty to a sex offense or agree to register in the plea bargaining agreement or be convicted of the sexual offense.

**Proponents' Testimony:**

**Diana Leibinger-Koch, Department of Corrections,** used some examples of a few cases concerning this bill. Case number one was an offender who molested a young girl from the age of 8 to 11 years old. The county attorney originally charged this man with felony, sexual assault, indecent exposure, and endangering the welfare of children. But during the plea bargain it was pleaded down to a non-registered sex offense of just regular assault. He

does not have to register as a sex offender and the community has no idea that this man is a sex offender. She said another case was an offender was charged with felony sexual assault, but during the course of his case he picked up a bail jumping charge. When they found him he plea bargained guilty to only the bail jumping charge and the felony sexual charge was dismissed. She said in another example a man sexually molested a 14 year old girl, raped her, and then stabbed her. He was charged with attempted deliberate homicide, sexual assault, etc. During the plea bargain the state dismissed the sex offenses as he pleaded guilty to deliberate homicide. He does not have to register as a sex offender when he gets out of prison. She cited other cases that dealt with sexual offenses. She said these example are not meant to be a criticism of prosecutors and the plea bargaining system. She said under this bill the prosecutor could of included registration as part of the plea bargain agreement. This bill does not in any way change the current sex offender registration requirements. This is a public safety issue. In the original bill it had the ability of the judge to require the person to register as a sex offender even if that was not what they were being charged for. This is no longer in the bill. The defendant must agree in a plea bargain agreement to register as a sex offender. She said there are five other states in which a judge can require this registration regardless of whether they plead guilty of a sexual offense or not.

***{Tape : 2; Side : B; Approx. Time Counter : 10:40 a.m.}***

**Sandy Heaton, Clinical Director of the Sex Offender Program at MT State Prison,** said this bill would allow them to do the registration and let law enforcement know what tier level these offenders are when they leave. This is a community safety issue and will help law enforcement. It will change the kind of supervision that needs to be done when they are in the community. The level of risk for a rapist to repeat his action is much higher than that of a murderer. She said she has seen sexual components to crimes all the way from burglary to murder.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. HALLIGAN** asked how does the public defender's side work on the plea bargain. He asked why would they ever agree to have a sexual offense included. **Diana Leibinger-Koch** said the prosecutor could persuade someone to plead guilty of a crime for less of a punishment if they agreed to registered as a sex offender. She said a lot of criminals do not want to go to prison with a sex offense because they take it tough in prison.

**SEN. HALLIGAN** read subsection 5, on page 6. He asked even though a person has an underlying sexual offense that they never plead guilty to, would they not fall under subsection 5. **Diana Leibinger-Koch** said that is correct. She said subsection 5 applies to people in prison right now with a sexual offense on their record. It does not apply to people who don't have the registration requirement right now. She said this only applies to a person leaving prison and they have the sex offense on their record.

**SEN. HALLIGAN** asked if this is a double jeopardy issue with respect to the enhanced penalty. **Diana Leibinger-Koch** said the department cannot impose a lifetime registration requirement.

**SEN. HALLIGAN** asked if they designate offenders as a one, two or three. **Diana Leibinger-Koch** said that was correct. Section 5 does have the department designate an offender as a one, two or three level. The bulk of Supreme Court cases right now does not say registration is a punishment and it is not an offense for the purpose of due process. She said it is only a procedural requirement and not a punishment.

**SEN. HALLIGAN** asked if that has been litigated. **Diana Leibinger-Koch** said yes that has been litigated in several circuit court cases.

**SEN. GRIMES** said he likes the original language in which the court might decide to include a sexual offense. He asked when the committee removed that language what did they insert in place of that. **REP. MOOD** said there were several that were concerned about due process.

**SEN. GRIMES** said they struck section 2 and did they add any new language. **Diana Leibinger-Koch** said they inserted the new section on page 5 in place of the first section.

**CHAIRMAN GROSFIELD** said there could be some Constitutional problems on page 6, lines 1-4 and 15-16. He asked what would the bill look like if they struck section 2. **Diana Leibinger-Koch** said the level designation section is applied after someone has been designated a sex offender. The level designation determines what level of community notification there will be. The department is not designating someone a sex offender. They are helping law enforcement by telling them what they think the designation should be so they can release the appropriate information to the community. This is why there is no Constitutional issues here.

**CHAIRMAN GROSFIELD** said if they designate someone as a level 3 they are imposing an additional sentence in a sense of lifetime registration. **Diana Leibinger-Koch** said the lifetime registration has already been imposed on these people.

**CHAIRMAN GROSFIELD** said prior to 1995 anyone that was in prison on a sexual offense, lifetime registration didn't apply to them. But it sounds like they are applying level designations to prisoners who are released that were in before that law came into effect. **Diana Leibinger-Koch** said last session they imposed an applicability section onto the registration section. This applied to anyone who was in the custody of the department after 1989.

**SEN. GRIMES** asked if the sex offender's name and address will be published and does that apply to all sex offenders even if they haven't received a level designation. **Diana Leibinger-Koch** said the name and approximate address will be published for a level one but the exact address could be released for a level two or three designator.

**Closing by Sponsor:**

**REP. MOOD** said sex offender notification is very important for our communities and there are many that escape from registering and this bill addresses that.

*{Tape : 2; Side : B; Approx. Time Counter : 11:04 a.m.}*

**HEARING ON HB 482**

**Sponsor:** **REP. JEFF MANGAN, HD 45, Great Falls**

**Proponents:**

Anita Roessmann, Attorney for Montana Advocacy Program  
Kellie Gibson, Cascade County Juvenile Detention Center  
Valerie Weber Rasch, Director of Youth Center in Billings,  
Peggy Beltrone, Cascade County Commissioner  
Donna Maddix, Flathead County Superintendent of Schools  
Allen Horsfall, Montana Board of Crime Control  
Bill Kennedy, Yellowstone County Commissioner  
Jani McCall, MT Youth Justice Council  
Craig Anderson, MT Youth Justice Council  
Steve Nelsen, MT Youth Justice Council

**Opponents:**

**Dennis McCave, Yellowstone County Detention Facility**



SEN. DEBBIE SHEA, SD 18, Butte  
Bill Slaughter, Sheriff in Gallatin County  
Anita Shaw Tymrack, Gallatin County Detention Center  
Scott Osler, Flathead County Juvenile Center  
Bob Jones, Chief of Police in Great Falls  
Gary Boyer, Assistant Professor of Criminal Justice at University  
of Great Falls,  
Dan Minton, Missoula County Juvenile Detention Center

Opening Statement by Sponsor:

REP. JEFF MANGAN, HD 45, Great Falls, said over the past two years there has been some internal division within the Montana Board of Crime Control concerning the post council and the youth justice council. They would like to have separate training for juvenile detention center officers. This bill provides for an alternative juvenile detention officer training to be developed over the next two years. He read and talked about section one of the bill. He said this bill also has a sunset provision. He said in current law there is no definition of a corrections officer and this bill addresses that also. He said current rules of the post council allow for alternative training. This bill begins to develop that alternative training as determined by the post advisory council. More credence needs to be put in the regular course for juvenile training. He said the current course is three weeks long and they have put more juvenile information within the course, but there needs to be more. They either have to make a separate course or expand the time allotted in the current course. However, this could be very expensive to the counties and detention centers. He said this bill originally made it mandatory to provide a separate training. He said they changed that and worked out the liability, permissive, evaluation, time and sunset issue. He said they have had pilot projects before in similar areas. He said this will be reviewed quarterly and they will receive more training than any other juvenile detention officer that has ever had training.

*{Tape : 2; Side : B; Approx. Time Counter : 11:14 a.m.}*

Proponents' Testimony:

Anita Roessmann, Attorney for Montana Advocacy Program, rose in support of HB 482. EXHIBIT(jus67a08) She also passed out a newspaper article from *The Hartford Courant*, called "Deadly Restraint". EXHIBIT(jus67a09)

Kellie Gibson, Cascade County Juvenile Detention Center, turned in testimony in favor of HB 482. EXHIBIT(jus67a10)

**{Tape : 3; Side : A; Approx. Time Counter : 11:24 a.m.}**

**Valerie Weber Rasch, Director of Youth Center in Billings,** said if they are going to spend 120 hours of training time that is costly and requires a lot of human resources then they need to train people about their job. She said it doesn't make sense to train them for a broad based correctional detention approach. She said in their 12 year history they have never had a suicide or a staff member injured by a youth. She said as a detention administrator she worries about getting sued. She said if something happens in her facility and she gets called to court she needs to be able to prove that her staff was trained appropriately. She handed out two handouts for the committee.

**EXHIBIT(jus67a11) EXHIBIT(jus67a12)** Juvenile specific training is the best option for the state and at the end of two years they will be able to look at this and see if it is working. She said what if it is your nephew, cousin, grandchild, etc. that has to go to a youth center? She said wouldn't they want to have staff that was trained specifically to deal with juvenile detention?

**Peggy Beltrone, Cascade County Commissioner,** said two and half years ago their commission sent a letter to the post council refusing to send anymore of their juvenile detention officers to their training. She said this letter set a dark period of time for juvenile detention, law enforcement, and the Board of Crime Control for Cascade County. Staff had been abusing children and many were not receiving the right kind of care that they needed. Part of this problem stemmed from the fact that they were not receiving the right kind of training at the post council academy and therefore were wasting the taxpayers money. She said the training that this staff received at the post council training was not adequate to get the tools to recognize the appropriate treatment of youth. Therefore, the commissioners decided not to go to post council training and focus on better instruction. She said this bill is a way to make sure children are protected.

**Donna Maddix, Flathead County Superintendent of Schools,** said they should develop a model that is more child specific. She said this bill has a sunset clause so that it can be revisited again to see if this is working.

**Allen Horsfall, Montana Board of Crime Control,** said this debate cannot be resolved without a legislative action. He said he has a lot of respect for the post council and the type of training that they do. The youth justice council voted unanimously for this bill.

**{Tape : 3; Side : A; Approx. Time Counter : 11:40 a.m.}**

**Bill Kennedy, Yellowstone County Commissioner,** said this bill will allow the development and implementation for specific juvenile training curriculum in a pilot project. He said for the past 12 years, juvenile detention facilities have demonstrated an ability to provide safe, secure, and effective services. Appropriately trained staff members have been the cornerstone of this good record. He said Yellowstone County is self insured and they want their juvenile officers trained appropriately. He said they are willing to get this ready and study this for two years and then have the curriculum ready to go and move forward. He said it costs about \$1500 for every officer that is trained at the academy.

**Jani McCall, MT Youth Justice Council,** said they want to have safety and quality in terms of what they are doing with corrections. Counties would have the choice of where to send their detention officers for training. The Board of Crime Control will have the ultimate decision of whether or not this curriculum will move into the existing curriculum at the academy. Specialized training is needed for youth and it is different from adult training.

**Craig Anderson, MT Youth Justice Council,** said they support this pilot curriculum.

**Steve Nelsen, MT Youth Justice Council,** rose in support of the bill.

*{Tape : 3; Side : A; Approx. Time Counter : 11:50 a.m.}*

**Opponents' Testimony:**

**Dennis McCave, Yellowstone County Detention Facility,** said this bill exempts juvenile facilities from being accountable to do any training for the next two years. He said the issue at hand is the training of those who must maintain a safe and secure environment for youth confined for serious criminal activity. Security and safety practices are essential in the operation of any secure detention facility regardless of the ages of the persons involved. Good security practices do not inhibit treatment programs and should enhance them. He said the present training at the academy has been attended by many detention officers who work specifically and exclusively with juvenile offenders. These officers have found this training necessary and beneficial. The post council has specifically been addressing the increased inclusion and enhancement of juvenile detention officers in the basic program. If this bill is passed it will cause a detrimental impact on the overall development of detention. He said the

curriculum that is suggested in this bill is really no different than the present curriculum presented at the academy. He said this bill essentially allows local juvenile facilities to provide a basic training course in-house with little control of conduct and delivery. Developing and in-house training is not easy and is not cost effective for the on going operations of the facility during the actual training time. If this bill is passed it will create a loophole through established rules and law and diminish the role and effect of the Board of Crime Control and the Post Council. He turned in five documents for review and discussed them. **EXHIBIT(jus67a13)**

**SEN. DEBBIE SHEA, SD 18, Butte,** said they have researched this issue over and over again and these needs have been addressed. This should not be dealt with by the legislature because it is micro-managing. This is about money and not about what is best for workers, children or communities.

**Bill Slaughter, Sheriff in Gallatin County,** said this bill is not necessary. He said the Board of Crime Control developed a sub-committee to look at this issue. These people on this sub-committee will work hard to find an answer and if the best solution is to develop two curriculums they will do that.

**Anita Shaw Tymrack, Gallatin County Detention Center,** said there is a misconception on how they train their officers to deal with adults versus children. People should be treated as human beings. Adults are not treated any differently than juveniles are treated. Officers do better when they have exposure to both and to divide them would not be beneficial. She said one of her children spent some time in a correctional facility. She said she was treated professionally while she was there by those detention officers. She said she would love to see a course that is longer than three weeks. Perhaps some of this alternative training could be an intermediate or advanced course, but don't do away with the basic detention officer training.

**{Tape : 3; Side : B; Approx. Time Counter : 12:03 p.m.}**

**Scott Osler, Flathead County Juvenile Center,** said all staff at their center have been trained by the academy. He said they do their job well and are trained appropriately. He said security is one of their most valid concerns.

**Bob Jones, Chief of Police in Great Falls,** said they have dealt with this issue for over two years and they have addressed site-specific training as opposed to basic training issues. They have gotten into curriculum studies and all attitudes have been positive.

**Gary Boyer, Assistant Professor of Criminal Justice at the University of Great Falls,** said they have suggested doing site-specific training which would supplement the training that is provided by the law enforcement academy. The basic course is applicable to all detention officers. He said it is 120 hours and is monitored and administered by the law enforcement academy. This pilot program shows nothing regarding accountability, certification of instruction, and standardization. He said if there are two facilities doing training differently, then they are defeating the purpose of the training.

**Dan Minton, Missoula County Juvenile Detention Center,** said he has attended the Montana Law Enforcement detention officers basic training. This program works and is appropriate for juvenile detention officers. The people that teach the course bring juvenile issues into each block of instruction. He said the 120 hours spent training does not include the 40 hours of orientation training mandated before any juvenile detention officer enters the floor. He read the policies that juvenile detention officers must go through before working in these facilities. He said they treat their patients with respect and dignity. He said they also do 50 hours of in-service training per year. He said if this legislation is passed it will be a drain on county and state money.

*{Tape : 3; Side : B; Approx. Time Counter : 12:15 p.m.}*

**Questions from Committee Members and Responses:**

**CHAIRMAN GROSFIELD** asked where does the grants come from for the counties. **Gene Kiser** said the money that goes to the regional detention facilities comes from the General Fund.

**CHAIRMAN GROSFIELD** asked what juvenile population means. **Gene Kiser** said it is overall population of that region. He said there are five regions within the state and each is allocated by a formula based on population.

**CHAIRMAN GROSFIELD** said does this bill have any impact on the amount of money available to be distributed out. **Gene Kiser** said this bill will have no impact on the way these dollars are used.

**CHAIRMAN GROSFIELD** asked if the juvenile programs in Yellowstone and Cascade County will get any more money or less money with this bill. **Gene Kiser** said they will receive their allocation based upon the population of that region and they govern how they are going to spend those dollars.

**CHAIRMAN GROSFIELD** asked if the academy's budget would be affected. **Greg Noose, MT Law Enforcement Academy**, said no, the training is already funded through the regular subcommittee and budget process.

**SEN. BARTLETT** asked what are the roles of the Board of Crime Control, the Peace Officers Standards and Training Council and the Youth Justice Council in reference to training issues. **Gene Kiser** said the Board of Crime Control has the Post and Youth Justice Council that are both advisory to the board with the Youth Justice Council also being advisory to the Governor's office. He said the Post Council is responsible for certifying the training, curriculum, instructors, and other segments of the system. The Youth Justice Council is responsible for advising the Governor's office on issues involving youth.

**CHAIRMAN GROSFIELD** asked if Cascade and Yellowstone Counties are not sending people to the academy is there a financial impact.

**REP. MANGAN** said he is confused about this also. He said there is monies available for reimbursement on different types of training in different areas all through the year. He said if they have on-site training they will not have cover travel expenses, etc. **Jani McCall** said each detention facilities receives a regional grant for training and that training is not specific to the Law Academy and they have the flexibility to use other training. **Allen Horsfall** said the Board of Crime Control administers those dollars that are sent out by region. The regional board has the authority on how those dollars are spent. He said there can be more money go into training if the facility presents an increased training budget to their regional board and they approve that. He said they do fund up to 50 percent of training cost as a matter of operational costs for the facility itself.

**CHAIRMAN GROSFIELD** asked how many regions are there. **Allen Horsfall** said there are five regions.

**SEN. BARTLETT** asked what is the reference to operational costs. **Allen Horsfall** said training is considered an operational cost of the facility. He said if they send more people to the academy in a year and the regional board approves that, they would get more of their regions General Fund dollars for that purpose.

**SEN. BARTLETT** asked if there would be fewer of those regional dollars for a different purpose with that region during that time. **Allen Horsfall** said yes.

**CHAIRMAN GROSFIELD** asked what is the difference between in-house training and training at the academy. **Allen Horsfall** said

everyone involved has a different idea of site-specific-training. He used the example of a correctional officer at the prison attending this training course at the academy. And when they leave they must go back to the prison for firearm training because they don't offer that at the academy. He said that is site-specific training. **Valerie Weber Rasch** said her fiscal operating budget for last year was just over \$600,000. She said their allocation from the Board of Crime Control is about \$170,000. She said she has budgeted about \$8000 for training on detention issues. She said it costs about \$1500 to send someone to the academy. She said the issue is does she spend \$1500 that is specific to these people's job requirement or does she spend it on a general detention course? She said where she trains them is the issue, not how much she is going to spend training them.

**CHAIRMAN GROSFIELD** asked if the in-house training would be disruptive. **Valerie Weber Rasch** said they have requested that their instructor be certified by the academy and will do quarterly evaluations. They also plan on using the Met Net system so they can share training, etc. **Kellie Gibson** said their goal is to provide the best training that they can for their staff. She said they are not taking the option away of being able to send people to the academy. She said it is more disruptive to have staff gone for three weeks at a time and then try to integrate them back into the facility.

**Closing by Sponsor:**

**REP. MANGAN** said they have been studying this for two and half years. He said he has received no amendments from the opponents to try and make this bill better. Security and safety are going to be an important part of this training and meeting the needs of juveniles. He said this training will be looked at quarterly by the two councils and the Board of Crime Control. Training and development will be going on every single week for the next two years and then it will be reviewed by the councils, the board and then the Legislature will decide if it is a good optional course, mandatory course, etc. He said they need to treat juveniles as juveniles and adults as adults and realize those differences. The current course is excellent and all they want to do is look at an alternative course. He said 90 percent of all the other states are site based.

**ADJOURNMENT**

Adjournment: 12:45 P.M.

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SEN. LORENTS GROSFIELD, Chairman

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JODI PAULEY, Secretary

LG/JP

**EXHIBIT (jus67aad)**